

REMARKS

In view of the following remarks, the Examiner is requested to withdraw the rejections and allow Claims 1, 3-8, 10, 11, 13, 14 and 16-20, the only claims pending and under examination in this application following entry of the above amendment.

Claim 1 is amended. Support for this amendment may be found throughout the specification and claims as originally filed, specifically at page 7, paragraph 0021.

As no new matter is presented, entry of this amendment is respectfully requested.

Claim Rejections under 35 U.S.C. § 112, second paragraph

All claims have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Examiner has asserted the non-naturally occurring is contrary to accepted meaning.

Claim 1 as amended removes the term “non-naturally occurring” and replaces it with “synthetic”. Accordingly, the claims satisfy the requirements of 35 U.S.C. 112, second paragraph and this rejection may be withdrawn.

Claim Rejections under 35 U.S.C. § 102

Claims 1, 3-5, 7,8,11, 17-19 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Spengler (Pat. No. 6,669,879).

According to the M.P.E.P. § 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Verdegaal Bros. v. Union Oil Co., 2 USPQ2d 1051 (Fed. Cir. 1987). Additionally, the identical invention must be shown in as complete detail as is contained in the claim. Richardson v. Suzuki Motor Co., 9 USPQ2d 1566 (Fed. Cir. 1990).

In addition, when the compound is not specifically named, but instead it is necessary to select portions of teachings within a reference and combine them. . . anticipation can only be found if the classes of substituents are sufficiently limited or well delineated. Ex parte A, 17 USPQ2d 1716 (Bd. Pat. App. & Inter. 1990). If one of ordinary skill in the art is able to "at once envisage" the specific compound within the generic chemical formula, the compound is anticipated. One of ordinary skill in the art must be able to draw the structural formula or write the name of each of the compounds included in the generic formula before any of the compounds can be "at once envisaged." One may look to the preferred embodiments to determine which compounds can be anticipated. In re Petering, 133 USPQ 275 (CCPA 1962).

The Office asserts that Spengler discloses a pesticide composition of chemical pesticides, crop treatment agents, vitamins, carbon-skeleton-sucrose, fats, cofactors, minerals and trace minerals, macro and micro nutrients and complexing agents.

Spengler does not disclose each and every element in the current invention. Specifically, Spengler does not disclose that the composition MUST comprise ALL of the following elements: (a) a synthetic pesticide; (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component. Spengler does not specify that the number and type of active ingredients MUST include at a minimum the five claimed elements recited in the present claims. Spengler only specifies that its solid dosing include at least one filler chosen from its multitudinous filler options, ranging from 'crop treatments' to pharmaceutically active components, human food products to fragrances. (Col 6, lines 44-54).

Thus, Spengler does not set forth each and every element of the instant claims, namely that it include (a) a synthetic pesticide; (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component.

Additionally, Spengler is drawn to a solid dosing that is capable of dispersing "all substances with a physiological action as long as they do not decompose under the processing conditions." Spengler further defines this as "active pharmaceutical ingredients (for humans and animals), active ingredients for crop treatment, insecticides, active ingredients for animal food and human food products, fragrances and perfume oils." (See Col. 5, lines 60-66). Examples of possible fillers occupy fully two columns worth of information (See Col. 6-7). However, possible examples of crop treatments are limited to three examples "vinclozolin, epoxiconazole, and quinmerac."

The only instruction limiting the choice of fillers in Spengler is that it a) has a physiological action, and b) that it does not decompose under processing conditions. There is accordingly no mention that various ingredients from the more carefully delineated classes of fillers may be combined. There is certainly no mention that this form must comprise specifically at least the five elements specified in the present claims, namely (a) a synthetic pesticide; (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component.

Due to the huge number of possible fillers presented, if any combination of greater than one, of all the mentioned fillers were deemed covered by this patent, there would be a huge number. Including the various types of binder mentioned (which the Examiner cites as providing the carbon skeleton), there would be well over one million combinations. Thus, one of ordinary skill, confronted with the numerous possibilities for fillers presented by Spengler, would not be able to "at once envisage" a composition comprising the 5 elements in the instant claims.

Thus, Spengler neither discloses each and every element of the instant invention nor would one of ordinary skill be able to immediately envisage the instant product given the multitudinous filler espoused by Spengler.

Therefore Spengler does not anticipate the claims. As such, the rejection of Claims 1, 3-5, 7,8,11, 17-19 under 35 U.S.C. § 102(b) as being anticipated by Spengler (Pat. No. 6,669,879) may be withdrawn.

Claim Rejections under 35 U.S.C. § 103

Claims 1, 3-8, 10, 11, 13, 14 and 16-20 have been rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Spengler (6,669,879) in view of McCoy (5,453,277). In making this rejection, the Office asserts that Spengler provides the instant invention of a pesticide that can be combined with fertilizers, but leaves it to the artisan to determine desired specific macro, micro & energy source nutrients and co-factors & their respective amounts. The Office asserts that this deficiency is made up by McCoy, which provides a plant treatment agent which combines the Spengler minerals with molasses and macro nutrients.

As stated in MPEP §2144.08: The fact that a claimed species is encompassed by a prior art genus is not sufficient by itself to establish a prima facie case of obviousness In re Baird, 16 F.3d 380 (Fed. Cir. 1994) (stating “[A] reference must be considered not only for what it expressly teaches, but also for what it fairly suggests.” In re Burckel, 592 F.2d 1175, 1179, 201 U.S.P.Q. (BNA) 67, 70 (CCPA 1979).) Some motivation to select the claimed species or subgenus must be taught by the prior art. In re Baird, 16 F.3d. at 382-82.

Spengler discloses fillers from numerous fields, including the pharmaceutical industry and the fragrance industry. Thus the possible combination of different components of compositions of Spengler that could be dosed is limitless. There is no suggestion in Spengler to choose to combine a pesticide with different fertilizers, much less to specifically combine a synthetic pesticide with (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component.

This deficiency is not remedied by McCoy, which is cited merely to provide the more exact nutrients disclosed in the instant invention.

Because neither Spengler nor McCoy provide any guidance whatsoever to combine the five specified components of the instant claims from the limitless possibilities disclosed in these references, the instant claims are not obvious over these references.

As such, Claims 1, 3-8, 10, 11, 13, 14 and 16-20 are not obvious under 35 U.S.C. § 103(a) over Spengler (6,669,879) in view of McCoy (5,453,277) and this rejection may be withdrawn.

Claims 1, 3-8, 10, 11, 13, 14 and 16-20 have been further rejected under 35 U.S.C. § 103(a) as allegedly being obvious over Summers (3,514,516) in view of Beaty (5,634,959), Kinnersley (4,976,767), Wahlberg (3,231,365) and Van Barneveld (6,254,654).

In making this rejection, the Office asserts that Summers provides a nematocidal & fungicidal composition, specifically sodium aluminofluorides, to soil, with reduction of phytotoxicity that are combinable with fertilizers. The Office further asserts that Beaty discloses a fertilizer formulation which includes a complexer, macro and micro minerals, and vitamins and cofactors in the form of fish solubles and seaweed. The Office further asserts that Kinnersley provides a fertilizer formulation which includes an energy source, macro minerals and a complexing agent. The Office further asserts that Wahlberg discloses a fertilizer in which the required nutrients and amounts depend upon the crop of concern, that the composition also includes macro and micro nutrients and energy sources of seaweed, animal meal and vegetable oils. The Office further asserts that Van Barneveld provides a fertilizer that can be combined with other agents, which include macro and micro nutrients as needed by the crops, as well as a yeast

cofactor, sugars and molasses.

The Office asserts that it would have been obvious to a person of ordinary skill in the art to use a pesticide/fertilizer combination choosing the specific pesticide/other components as specified in the above references and as needed by the crops.

The Applicant respectfully disagrees. An invention is not obvious under 35 U.S.C. §103, "where the prior art [gives] either no indication of which parameters [are] critical or no direction as to which of many possible choices is likely to be successful." Merck & Co., Inc. v. Biocraft Labs., Inc., 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting In re O'Farrell, 853 F.2d 894, 903 (Fed. Cir. 1988)). "It is insufficient [when examining obviousness] to select from the prior art the separate components of the inventor's combination, using the blueprint supplied by the inventor." Fromson v. Advance Offset Plate, Inc. 225 USPQ 26 (Fed. Cir. 1985). Some motivation to select the claimed species or subgenus must be taught by the prior art. In re Baird, 16 F.3d. at 382-82.

None of the cited references teach or suggest a composition which MUST include at a minimum (a) a synthetic pesticide; (b) an assimilable carbon-skeleton energy component; (c) a water soluble macronutrient; (d) a water soluble micronutrient; and (e) a vitamin/cofactor component, combined with a complexing agent. The Examiner asserts that the amounts of these items are result effective parameters, chosen to meet the needs of a specific crop or field. However, the requirement that the composition contain at minimum these 5 elements (a)-(e) and the specific identity of each of the components, is not taught by any combination result effective parameters.

The references only disclose the components piecemeal among their many other components, with no instruction of which pieces of among the many to chose. For the same reasoning as discussed above with regard to the Spengler-McCoy rejection, when numerous compounds are disclosed with no motivation to choose select compounds, there is not a prima facie case of obviousness. Following the Examiner's reasoning with

regard to Summers in view of Beaty, Kinnersley, Wahlberg, and Van Barneveld would lead to myriad other different combinations of pesticide and fertilizers. These combinations could consist of 4 components and still be within the reasoning of the Examiner. These combinations could not include micronutrients and still be within the reasoning of the Examiner. There is no teaching which shows that it is beneficial to structure the composition to include at a minimum those elements delineated in claimed elements (a) – (e).

Thus, the combined references of Summers in view of Beaty, Kinnersley, Wahlberg, and Van Barneveld do not teach or suggest all of the claim limitations and therefore fail to render the instant claims obvious.

Accordingly, Claims 1, 3-8, 10, 11, 13, 14 and 16-20 are not obvious under 35 U.S.C. § 103(a) over Summers (3,514,516) in view of Beaty (5,634,959), Kinnersley (4,976,767), Wahlberg (3,231,365) and Van Barneveld (6,254,654) and this rejection may be withdrawn.

CONCLUSION

The Applicant submits that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-0815, order number YAMA-009.

Respectfully submitted,
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